

**COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE SECRETARY OF THE COMMONWEALTH
SECURITIES DIVISION
ONE ASHBURTON PLACE, ROOM 1701
BOSTON, MASSACHUSETTS 02108**

IN THE MATTER OF:

NEXT FINANCIAL GROUP, INC.,

RESPONDENT.

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Docket No. E-2017-0079

CONSENT ORDER

I. INTRODUCTION

This Consent Order (“Order”) is entered into by the Massachusetts Securities Division (the “Division”) and NEXT Financial Group, Inc. (“NEXT”) with respect to the investigation (Docket No. E-2017-0079) conducted by the Enforcement Section of the Division (the “Enforcement Section”) into alleged violations of Sections 203 and 204 of the Massachusetts Uniform Securities Act, MASS. GEN. LAWS ch. 110A (the “Act”), and the corresponding regulations promulgated thereunder at 950 MASS. CODE REGS. 10.00 – 14.413 (the “Regulations”).

On December 18, 2019, NEXT submitted an Offer of Settlement (the “Offer”) to the Division. NEXT neither admits nor denies the Statement of Facts set forth in Section VI and Violations of Law set forth in Section VII below, and consents solely for the purpose of these proceedings to the entry of this Order by the Division, consistent with the language and terms of the Offer, settling the investigation hereby with prejudice.

II. JURISDICTION AND AUTHORITY

1. As provided for by the Act, the Division has jurisdiction over matters relating to securities pursuant to chapter 110A of Massachusetts General Laws.
2. The Offer was made and this Order is entered in accordance with the Act. Specifically, the acts and practices investigated took place in Massachusetts.

III. RELEVANT TIME PERIOD

3. Except as otherwise expressly stated, the conduct described herein occurred during the approximate time period of January 1, 2007 to December 31, 2017.

IV. RESPONDENT

4. NEXT Financial Group, Inc. ("NEXT") is a broker-dealer and investment adviser with headquarters in Texas. NEXT has a Financial Industry Regulatory Authority ("FINRA") Central Registration Depository number of 46214. NEXT has been registered in Massachusetts as a broker-dealer since 1999 and notice filed as an investment adviser in Massachusetts since 2000.

V. RELATED PERSON

5. NEXT Registered Representative A ("Rep A") is a broker-dealer agent and investment adviser representative of NEXT. Rep A has been a registered broker-dealer agent in Massachusetts since 1999 and has been registered as a broker-dealer agent of NEXT since 2006.

VI. STATEMENT OF FACTS

A. BACKGROUND

i. The Enforcement Section's Investigation

6. In June 2017, the Division received a call from a Massachusetts retiree and veteran ("Massachusetts Complainant") regarding his dealings with Rep A. In response, the Enforcement Section requested information and documents from NEXT in July 2017.

7. Massachusetts Complainant stated to the Enforcement Section that he relied on Rep A for investment advice in connection with his retirement assets and allowed Rep A to direct the investment of his portfolio.

8. Massachusetts Complainant stated to the Enforcement Section that he was seeking conservative investments that would increase in value over time. Rep A sold Massachusetts Complainant annuities and non-traded real estate investment trusts ("REITs").

9. Massachusetts Complainant maintains that he did not fully understand the nature of the alternative investments sold to him by Rep A and NEXT even with proper offering documents available to him.

ii. General Suitability

10. NEXT requires all customers to complete an Account Information Form ("AIF") listing their home address, date of birth, place of employment, annual income, net worth, investment experience, investment risk tolerance, investment objective, and investment time horizon.

11. All Office of Supervisory Jurisdiction (“OSJ”) Managers and Home Office Principals have access to all relevant customer information through NEXT’s compliance software.

12. Under the Act and the Regulations, all broker-dealers have a responsibility to recommend products that the broker-dealer has “reasonable grounds to [believe are] suitable for the customer based upon a reasonable inquiry concerning the customer’s investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer.”

iii. Non-Traded Real Estate Investment Trust Suitability

13. NEXT classifies non-traded REIT products as alternative investments.¹

14. All NEXT customers who purchase an alternative investment, including a non-traded REIT, must complete an Alternative Investment Disclosure Form (“AIDF”) listing, among other things, the investment horizon for the particular illiquid product, and the percentage of the customer’s liquid net worth the investment constitutes.

15. NEXT Written Supervisory Procedures (“WSPs”) require OSJ Managers and Home Office Principals to review and approve every non-traded REIT sale, which includes comparing the information provided on the AIF and AIDF and conducting “any other research deemed necessary in order to confirm the suitability of each transaction.”

¹ Non-traded REITs are generally considered an illiquid investment, which means that they cannot be sold readily in the market. Investors usually must wait until the non-traded REIT becomes publicly traded or another liquidity event occurs to achieve liquidity. These liquidity events may not occur for 10 years or more after the initial investment. Furthermore, because non-traded REITs are not publicly traded, share valuation is difficult. Non-traded REITs are also generally associated with higher than average commissions. In comparison, publicly traded REITs are listed on an exchange such as the New York Stock Exchange or NASDAQ. Since they are traded on exchanges, publicly traded REITs are generally liquid, meaning they can be sold readily in the market. Also, publicly traded REITs are easy to value by referencing the current value on an exchange.

16. In addition to these requirements, NEXT maintains specific alternative investment guidelines, which state, in relevant part: “alternative investments should not exceed 20% of a customer’s liquid net worth; no more than 5% of a customer’s liquid net worth should be placed in any single investment program; and alternative investments should not be sold to customers over the age of 80.”²

17. NEXT WSPs also provide that “if the customer’s holdings exceed 20% of the customer’s liquid net worth (or if the investment comprises more than 5% of the customer’s liquid net worth), the registered person is required to provide a detailed, written explanation on the disclosure form setting forth why that amount is suitable for the customer.”

18. NEXT defines liquid net worth as “a [customer’s] net worth minus assets that cannot be converted to cash within 30 days, such as real estate, business equity, personal property, automobiles, and expected inheritances.”

19. NEXT WSPs further provide that “liquid net worth generally excludes ... non-traded REITs.”

20. When a registered principal determines that a transaction does not comply with alternative investment guidelines, NEXT WSPs require registered principals to obtain a further explanation “expounding upon the registered persons [sic] rationale for recommendation and/or suitability.”³

B. SALES PRACTICE VIOLATIONS

21. Over a period of approximately 10 years, Rep A recommended and sold hundreds of non-traded REITs to Massachusetts investors. The Enforcement Section alleges that

² For transactions processed after December 2015, the single investment program guideline was increased from 5% to 10%.

³ This requirement was withdrawn in December 2014.

many of these sales were unsuitable and exceeded NEXT's liquid net worth concentration guidelines.

22. Between 2010 and 2015, NEXT processed more than 300 REIT purchases in the accounts of over 160 Massachusetts customers.

23. Between 2010 and 2015, NEXT processed at least 51 non-traded REIT transactions that exceeded NEXT's concentration guidelines.

24. For 48 of those 51 transactions, NEXT processed multiple simultaneous non-traded REIT transactions in a customer's account without accounting for the corresponding reduction to the customer's liquid net worth that occurred for each individual transaction. As a result, NEXT incorrectly calculated the percentage of a customer's liquid net worth that each non-traded REIT purchase constituted.

25. Of those 51 transactions, three non-traded REIT sales involved investors who were over age 80 at the time of the transaction, contrary to NEXT WSPs.

C. FAILURE TO SUPERVISE

26. Every broker-dealer has a duty to establish, maintain, and enforce a system to supervise the activities of its agents that is reasonably designed to achieve compliance with all applicable securities laws and regulations.

27. NEXT is responsible for ensuring that its broker-dealer agents comply with NEXT WSPs, applicable FINRA rules, and securities laws and regulations.

28. NEXT has established WSPs intended to provide reasonable supervision of the activities of its agents. Nonetheless, the Enforcement Section alleges that NEXT has not reasonably enforced its system of supervision.

29. NEXT WSPs require OSJ Managers and Home Office Principals to review and approve every non-traded REIT sale. The review includes comparing information provided on the AIF and AIDF and conducting "any other research deemed necessary in order to confirm the suitability of each transaction."

30. NEXT supervisors did not independently calculate the percentage of a customer's liquid net worth that a non-traded REIT purchase constituted for each individual simultaneous transaction that Rep A executed. This resulted in the firm processing a number of non-traded REIT transactions that exceeded NEXT's concentration guidelines.

31. Since NEXT did not calculate the percentage of a customer's liquid next worth each time it processed simultaneous non-traded REIT purchases, NEXT did not request or obtain any further explanation to determine suitability. NEXT approved the transactions without taking any further action.

32. By failing to account for the compounding impact each individual simultaneous non-traded REIT transaction would have on a customer's non-traded REIT concentration, a number of transactions exceeded the concentration guidelines in NEXT's WSPs.

33. As a result, NEXT processed a number of non-traded REIT transactions in Massachusetts customers' accounts over a period of nearly six years that exceeded its concentration guidelines, as provided for in NEXT WSPs.

VII. VIOLATIONS OF LAW

Count 1 – Violations of MASS. GEN. LAWS ch. 110A, § 203

34. Section 203(a) of the Act provides:

Every registered broker-dealer and investment adviser shall make and keep accounts, correspondence, memoranda, papers, books, and other records as the secretary prescribes by rule or order, except as limited by section 15 of the Securities Exchange Act of 1934, in the case of a broker-dealer, and by section 222 of the Investment Advisers Act of

1940, in the case of an investment adviser. All records so required, with respect to an investment adviser, shall be preserved for such period as the secretary prescribes by rule or order.

MASS. GEN. LAWS ch. 110A, § 203(a).

35. The Enforcement Section alleges that the conduct of NEXT, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 203.

Count 2 – Violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J)

36. Section 204(a)(2)(J) of the Act provides:

The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

(J) has failed to reasonably supervise agents, investment adviser representatives or other employees to assure compliance with this chapter[.]

MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J).

37. The Enforcement Section alleges that the conduct of NEXT, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J).

VIII. ORDER

IT IS HEREBY ORDERED:

- A. NEXT shall permanently cease and desist from further conduct in violation of the Act in the Commonwealth;
- B. NEXT is censured by the Division;
- C. NEXT shall provide written offers of rescission and/or restitution (“Written Offers”) to Massachusetts Complainant and Massachusetts investors who purchased non-

traded REIT products sold in violation of the Act or NEXT WSPs and for each non-traded REIT product that:

- a. is not currently traded on a public market;
- b. is currently traded on a public market and held at a value that is less than the value of the principal investment amount plus an interest rate, per annum, not unacceptable to the Enforcement Section, less any cash distributions received during the course of holding the product; or
- c. was sold in violation of product age limits enumerated in NEXT WSPs.

D. NEXT shall provide Written Offers to Massachusetts Complainant and all investors identified in Section VIII(C) (the "Massachusetts REIT Investors") subject to the following terms:

- a. Within fifteen (15) days of the Order, NEXT shall provide an accounting of all non-traded REITs sold to Massachusetts residents in violation of the Act or NEXT WSPs (the "Accounting"). The Accounting required by this Section shall not be unacceptable to the Enforcement Section;
- b. Within fifteen (15) days of the, NEXT shall provide a draft of the proposed Written Offers to the Enforcement Section together with the Accounting. Such draft shall not be unacceptable to the Enforcement Section;
- c. Within thirty (30) days of receiving written or electronic notice that the Accounting and the proposed Written Offers are not unacceptable to Enforcement Section, NEXT shall make Written Offers to the Massachusetts REIT Investors;

- d. The Written Offers shall remain open to the Massachusetts REIT Investors for seventy-five (75) days (the "Offer Period");
 - e. Investors who accept a Written Offer will transfer their shares to NEXT or its designee in exchange for the refund of their principal investment;
 - f. Within ten (10) days following the expiration of the Offer Period, NEXT agrees to make payments to all the Massachusetts REIT Investors who accepted Written Offers; and
 - g. Within thirty (30) days following the date that NEXT makes rescission payments, NEXT shall provide the Enforcement Section with a final accounting (the "Final NEXT Rescission Accounting") and certification of the disposition of the payments made pursuant to Sections VIII(C) and (D) above. The Final NEXT Rescission Accounting shall be in a form not unacceptable to the Enforcement Section and include: (1) the name and address of each recipient of rescission and/or restitution; (2) the amount paid to each individual that accepted the Written Offer; (3) the date of each payment; (4) evidence of all payments made; (5) the date and amount of any returned payment(s); and (6) a description of any effort to locate a prospective recipient of a Written Offer whose payment was returned, or to whom payment was not made due to factors beyond NEXT's control. NEXT shall cooperate with requests for information in connection with the Final NEXT Rescission Accounting and provide supporting documentation to the Enforcement Section upon request.
- E. Within sixty (60) days of the Order, NEXT shall provide the Enforcement Section with a report detailing the process NEXT engaged in to enhance its policies and

procedures related to the sales practices of NEXT and its agents and representatives in connection with non-traded REITs, as guided and informed by the allegations contained in this Offer. The report will include, but is not limited to, a detailed description of the review performed, a description of all conclusions reached, a summary of the recommended changes, a summary of changes made, and a summary of justifications for declining all recommended changes. To the extent NEXT policies and procedures do not include methods for enforcement and compliance oversight relating to non-traded REIT purchases or sales, NEXT shall establish such procedures;

F. Within ten (10) business days of the Order, NEXT shall pay a fine in the amount of \$150,000 (USD) to the Commonwealth of Massachusetts. Payment shall be: (1) made by United States postal money order, certified check, bank cashier's check, bank money order, or wire transfer; (2) made payable to the Commonwealth of Massachusetts; (3) either hand-delivered or mailed to the Enforcement Section at One Ashburton Place, Room 1701, Boston, Massachusetts 02108, or wired per Division instructions; and (4) submitted under cover letter or other documentation that identifies the payor and the docket number of the proceedings. Additionally, NEXT shall provide the Enforcement Section with notice twenty-four (24) hours prior to the payment;

G. For good cause shown, the Enforcement Section may agree to extend any of the procedural deadlines set forth above. Any request to extend any of the procedural deadlines set forth above shall be made in writing;

H. NEXT shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal or local tax for any amounts that NEXT shall pay pursuant to the Order;

I. NEXT shall not seek or accept, directly or indirectly, reimbursement or indemnification including, but not limited to, any payments made pursuant to an insurance policy, with regard to any amount that NEXT shall pay pursuant to the Order;

J. All fines, penalties, and/or monies paid pursuant to offers of rescission and/or restitution by NEXT pursuant to this Order are intended by NEXT and the Enforcement Section to be a contemporaneous exchange for new value given to NEXT pursuant to 11 U.S.C. § 547(c)(1)(A) and are, in fact, a substantially contemporaneous exchange pursuant to 11 U.S.C. § 547(c)(1)(B);

K. If NEXT is the subject of a voluntary or involuntary petition in bankruptcy under 11 U.S.C. §§ 101, et seq., within three-hundred sixty-five (365) days of the Order, NEXT shall notify the Enforcement Section, in a signed writing, within five (5) days of the date of the petition; and

L. Upon the issuance of the Order, if NEXT fails to comply with any of the terms set forth in the Order, the Enforcement Section may institute an action to have this agreement declared null and void. Upon issuance of an appropriate order and after a fair hearing, the Enforcement Section may re-institute an action against NEXT.

IX. SEVERABILITY

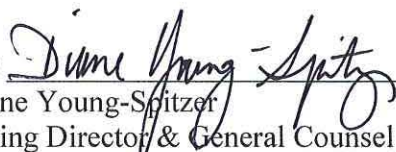
If any provision of the Order is held to be invalid, illegal, or unenforceable, all other terms and provisions of the Order shall nevertheless remain in full force and effect.

XI. NO DISQUALIFICATION

This Order waives any disqualification in the Massachusetts laws, or rules or regulations thereunder, including any disqualifications from relying upon the registration exemptions or safe harbor provisions to which NEXT may be subject. The Order is not

intended to form the basis or any disqualifications under Section 3(a)(39) of the Securities Exchange Act of 1934 or Rule 506 of the Regulation D under the Securities Act of 1933. The Order is not intended to form the basis of disqualification under FINRA rules prohibiting continuance in membership absent the filing of a MC-400A application or disqualification under the SRO rules prohibiting continuance in membership. The Order is not intended to form a basis of a disqualification under Section 204(a)(2) of the Uniform Securities Act of 1956 or Section 412(d) of the Uniform Securities Act of 2002.

WILLIAM FRANCIS GALVIN
SECRETARY OF THE COMMONWEALTH

By: 
Diane Young-Spitzer
Acting Director & General Counsel
Massachusetts Securities Division
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Date: December 20, 2019